

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

JEANNE HOBBS,)	
)	
Respondent,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW & ORDER
-vs-)	
)	OSPI 46-83
ERNEST FRIEDE, Chairpers)	
ROBERT BRIERE and ROLAND)	
MENARD, Members of the Board)	
of Trustees; BOX ELDER PUBLIC)	
SCHOOLS, SCHOOL DISTRICT 13-G,)	
)	
Appellants.)	

* * * * *

This matter arises from a Notice of Appeal by Appellants through their representative filed on May 23, 1983 from a Decision rendered April 26, 1983 by Hill County Superintendent of Schools Elinor Collins.

Both parties have submitted briefs in support of their position. The State Superintendent now being fully informed as to the record, briefs and matters contained therein and the law makes these:

FINDINGS OF FACT

1. The Appellants, by and through their representative Duane Johnson of Management Associates, filed a Notice of Appeal with the State Superintendent on May 23, 1983 appealing the Decision of the Hill County Superintendent of Schools dated April 26, 1983.

2. The State Superintendent of Public Instruction has requested an extension of time and by Affidavit has received an extended time for this decision since the submission of this case.

3. The parties have submitted briefs in support of their positions and this case has been deemed submitted by me.

4. Respondent Jeanne Hobbs, was hired for the position of head cook at the Box Elder School on May 5, 1982. This hiring is reflected in school board minutes for the May 5, 1982 regular meeting (Respondent's Exhibit A). Prior to accepting the position of head cook, Respondent was employed by Appellant as the breakfast cook for the 1981-82 school year and as the manager of the summer program for the summer of 1982.

5. Darlene Royce was hired as the breakfast cook. Mary Azure was hired as the assistant cook (Respondent's Exhibit A) and Pauline St. Pierre was hired as the dishwasher for the school year 1982-83.

6. The transcript reveals that Respondent was hired as a head cook during the school year 1982 and 1983. Appellant School District did not offer Respondent a written contract. The employment relationship was an oral agreement between the employer, Appellant School District, and employee, Jeanne Hobbs.

7. Appellant School District generally and as business custom and usage issues written contracts for both certified and noncertified employees. (Tp.55-60)

8. Appellant School District did not issue a written contract for Respondent. (See attached Memorandum and cites to the transcript.)

9. Appellant did issue a written job description. This job description was not signed by the School Board of Trustees but was acknowledged by Jeanne Hobbs, Respondent. The job description does not indicate the specific term of employment but speaks to a variety of dates - school year - month-to-month basis. (See attached Memorandum and cites to the transcript.)

10. The job description is not a recognized written contract by the Board of Trustees. The basic job description was to determine performance and responsibility and to provide a means of evaluation. Testimony by the Superintendent of the School District, Robert Heppner, and school board members concurred in that finding.

11. All parties were seriously concerned about Respondent's ability to handle the responsibility of management. (Tp.57) Because of this employment concern, the understanding of the parties as indicated both by the testimony of Superintendent Heppner and the Board of Trustees was that Respondent was hired on a temporary or "probationary

basis," Superintendent Heppner used the words "look-see."
(See attached Memorandum and cites to the transcript.)

12. This probationary employment was consistent with Respondent's practice of hiring an employee in a supervisory capacity on a probationary basis to determine if the employee could handle managerial responsibilities before becoming employed on an annual basis. (T p.57)

13. The understanding of the parties is reflected by the transcript and the testimony of Superintendent Heppner and Board of Trustee members as well as Respondent. Respondent was hired May 5, 1983. The Board of Trustees affirmed that position on June 2, 1983. She was hired at a rate of \$5.00 an hour. The specific term of employment was on an hourly basis, with the added assurance that Respondent would be evaluated monthly. (See attached Memorandum and cites to the transcript.)

14. The circumstances of this particular case reveal that a written contract was a regular business custom of the district for all employees, except one Respondent. In Respondent's case, it was not carried out because of the concern for a probationary period by both parties.

15. Superintendent Heppner testified that the job description was "required by affirmative action." From the record it appears that the employees knew that each person had a job description. They understood that the job

description outlined the conditions of their performance responsibilities and also indicated that the board of trustees had read the job description and understood the expectations of all parties. More importantly the record reveals that the parties understood the purposes of the job description.

16. This State Superintendent expressly finds that finding of fact number four of the county superintendent is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. This State Superintendent finds that Respondent was hired on a trial basis.

17. The nature of the employment in this situation was that Jeanne Hobbs had worked in the school district prior to being advanced to a management position. The board of trustees considered applicants in the hiring process for head cook. They gave Respondent an opportunity to try her management skills in a supervisory capacity as head cook. The board did have definite concerns about her management skills and held that her employment should be on a probationary or trial basis. Both the employer and the employee had some reservation about her management skills and required a "look-see" type basis.

18. Respondent experienced personnel problems while head cook. On or about August 23, 1983 Superintendent Heppner

was contacted concerning a problem between Respondent and Darlene Royce, the breakfast cook. Royce was advised that if she could not get along with Respondent, then she would have to quit. (T p. 65-66) On August 29, 1982, Darlene Royce submitted her resignation to Superintendent Heppner. (Respondent's Exhibit G)

19. This State Superintendent incorporates and herein agrees with Hill County Superintendent's findings no. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and **19**. From the foregoing findings of fact the Superintendent now draws these:

CONCLUSIONS OF LAW

1. This is a contested case before the State Superintendent of Public Instruction. Jurisdiction is in the State Superintendent of Public Instruction pursuant to Sections 20-3-107, 20-3-210 and 20-4-204(4) MCA.
2. There is no dispute that all procedural steps set forth in Section 20-3-107 and 20-3-210 have been followed by all parties.
3. The board of trustees of a school district has the right to employ and dismiss employees necessary to conduct the affairs of a school district. The trustees of a school district have the power to employ and dismiss personnel including Respondent.

4. Respondent's procedural due process rights were not violated. Respondent was not hired for a term basis but was hired "at will" and was subject to dismissal at the will of the trustees as provided in Section 39-2-503,

5. There was no written employment contract specifying the terms of Respondent's employment.

6. The Decision of the Hill County Superintendent of Schools is herein reversed as far as it is in conflict with these findings and conclusions in light of the test to determine "at will" v. "term" as found in the attached Memorandum Opinion.

ORDER

From these Conclusions of Law it is hereby ordered that the Decision of the Hill County Superintendent of Schools is reversed.

DATED this _____ day of January, 1984.

Ed Argenbright
State Superintendent

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

RONALD OELKERS,)	
Appellant)	OSPI'S
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW & ORDER
)	OSPI 53-83
BLAINE COUNTY HIGH SCHOOL)	
DISTRICT NO. 12, HARLEM)	
MONTANA,)	
Respondent.)	

* * * * *

This matter arises from a Notice of Appeal by Appellant through his attorney filed on July 12, 1983 from a Decision rendered July 1, 1983 by the Blaine County Superintendent of Schools John Moffat.

Both parties have submitted briefs in support of their positions and the State Superintendent now being fully informed as to the record, briefs and matters contained therein and the law makes these:

FINDINGS OF FACT

1. The Appellant, by and through his attorneys, Hilley and Loring, filed a Notice of Appeal with the State Superintendent on July 12, 1983 appealing a Decision of the Blaine County Superintendent of Schools dated July 1, 1983.

2. The parties have submitted briefs in support of their positions and this case has been deemed submitted by me.

3. Appellant served as a social studies teacher for the Harlem school district for seven years and has not taught physical education classes in the district.